

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

N.E.C.A. LOCAL UNION NO. 313 I.B.E.W.
HEALTH AND WELFARE FUND,
N.E.C.A. LOCAL UNION NO. 313 I.B.E.W.
PENSION FUND,
N.E.C.A. LOCAL UNION NO. 313 I.B.E.W.
DEFERRED INCOME PLAN, and
I.B.E.W. LOCAL 313/N.E.C.A. LABOR
MANAGEMENT COOPERATION COMMITTEE
c/o Zenith American Solutions
501 Carr Road, Suite 220
Wilmington, DE 19809

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS LOCAL UNION NO. 313
814 West Basin Road
New Castle, DE 19720

I.B.E.W. JOINT APPRENTICESHIP & TRAINING
CENTER FUND N.E.C.A. LOCAL UNION 313,
814 West Basin Road
New Castle, DE 19720

Plaintiffs,

v.

H & H SERVICES ELECTRICAL
CONTRACTORS, INC.
104 Somers Avenue
New Castle, Delaware 19702

Defendant.

**MOTION FOR JUDGMENT BY DEFAULT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 55(b)(2)
AGAINST DEFENDANT**

Plaintiffs, N.E.C.A. Local Union No. 313 I.B.E.W. Health and Welfare Fund, N.E.C.A. Local Union No. 313 I.B.E.W. Pension Fund and N.E.C.A. Local Union No. 313 I.B.E.W. Deferred Income Plan and I.B.E.W. Joint Apprenticeship & Training Center Fund N.E.C.A.

Local Union 313 (“Welfare Fund”, “Pension Fund”, “DIP Fund” and “Apprenticeship Fund”, and together, “Funds”); I.B.E.W. Local 313/N.E.C.A. Labor Management Cooperation Committee (“LMCC”); and the International Brotherhood of Electrical Workers Local Union No. 313 (“Union”), (together with Union, LMCC and Funds, “Plaintiffs”) respectfully move this Court, pursuant to Fed. R. Civ. Pro. 55(b)(2) to enter default judgment in favor of Plaintiffs and against Defendant H & H Services Electrical Contractors, Inc (“Defendant” or “Company”) with the relief set forth on the proposed order submitted with this motion.¹

In support of this Motion, Plaintiffs state the following:

1. The Complaint in this matter was filed on August 19, 2022.
2. Defendant, through its registered agent, was duly-served with the Summons and Complaint on August 22, 2022, as evidenced in the Return of Service filed with the Court. The court has personal jurisdiction over Defendant on the federal claims alleged in the Complaint.
4. Defendant has failed to appear, answer, plead or otherwise defend in response to the Summons and Complaint.
5. A Request for Clerk’s Entry of Default pursuant to Federal Rule of Civil Procedure 55(a) was filed on October 6, 2022. The Clerk entered the default on November 10, 2022. (Dkt. No. 12).
6. Defendant is a Delaware Corporation and therefore is not in military service on behalf of the United States.
8. The Court has subject matter jurisdiction of the claims under Section 301 of the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185, and Sections 502(g)(2) and 515 of

¹ James J. Howard was originally named as a defendant in his individual capacity. Plaintiffs filed a Notice of Dismissal without prejudice as to Mr. Howard on September 22, 2022. (D.I. 5).

the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §§ 1132(g)(2) and 1145, in this action.

9. This motion is based on the Complaint and default in this action and further supported by the Declaration of Scott Ernsberger and the Affidavits of Dawn Costa and Rick Miller, along with the exhibits submitted with the Declarations and Affidavits.

WHEREFORE, there being no just reason for delay, Plaintiffs ask that the Court:

(a) enter Judgment against Defendant as set forth in the attached proposed Order and Judgment by Default, and

(b) grant such other and further relief, legal or equitable, as may be just, necessary and appropriate.

Respectfully submitted,

FERRY JOSEPH, P.A.

Date: November 14, 2022

/s/ Rick S. Miller
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